IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2164 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHBHAI DHANSUKHBHAI RANA

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on December 7, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Dineshbhai Dhansukhbhai Rana, under the

provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the anti-activities of the detenu and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Qureshi, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on December 6, 1999 and the order detention was passed on December 7, 1999. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 Mr. Qureshi further contended that some of the documents supplied to the detenu are not legible. This has affected the right of the detenu of making an effective representation and this would vitiate the detention He, therefore, submitted that the order of detention my be quashed and set aside by allowing this petition.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on October 9, 1999. The same have been verified by the detaining authority on December 6, 1999 and the order is passed on December 7, 1999. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into

consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. So far as the registered offence is concerned, it is submitted that some of the documents supplied to the detenu are not legible. Attention of this Court is drawn to pages 4, 9 and 11, relating to the registered offence, which are found to illegible. They are shown to learned Assistant Government Pleader also and he also concedes to this. Supplying of illegible documents would amount to non-supply of documents or non-supply of grounds. This would affect right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. This would vitiate the continued detention.

7. In the result, the petition is allowed. The impugned order of detention dated December 7, 1999, passed against the detenu is hereby quashed. The detenu-Dineshbhai Dhansukhbhai Rana is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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